



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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OAG 17-030

December 19, 2017

Subject: Whether a city may terminate water services for failure to pay for garbage services, and contract with another local public service provider to terminate water service for failure to pay for garbage service.

Requested by: Larry Bryson
London City Attorney

Written by: Matt James

Syllabus: A city may terminate water services for failure to pay for garbage services. A public service provider may contract with another public service provider by interlocal agreement for the termination of public services for failure to pay for a related public service.

Statutes construed: KRS 65.240

OAGs cited: OAG 85-47; OAG 79-47

Opinion of the Attorney General

Larry Bryson, attorney for the City of London ("City"), has requested an opinion of this office on two issues: 1) May a city terminate water service for nonpayment of a garbage bill; 2) May a city enter into an agreement with other government entities to terminate water services for nonpayment of the city's garbage bill? We advise that a city may terminate water services for nonpayment



of a garbage bill.¹ A public service provider may contract with another public service provider by interlocal agreement for the termination of public services for failure to pay for a related public service.

Mr. Bryson informs us that the City generally provides water, sewer, and garbage services to its residents. Some residences now within the city limits of London receive water services from the Wood Creek Water District and the East Laurel Water District, and not from the City; however, the City still provides sewer and garbage services to these residences. The City of London would like to terminate water services to those residences served by them that have not paid their garbage bills. Further, the City would like to enter into agreements with the Wood Creek Water District and the East Laurel Water District to have them terminate their water services for nonpayment of the garbage bill to the City.

First, a city may terminate water services for the nonpayment for garbage services. In *Cassidy v. City of Bowling Green*, 368 S.W.2d 318 (Ky. 1963), the court considered "the right of the City to cut off its water service to property owners or tenants whose garbage disposal bills are delinquent." *Id.* at 319. The court held that:

For public health and sanitation purposes the City furnishes water service, sewerage service, and garbage disposal service. They are all inter-related and the City is under no obligation to furnish any or all of these services except upon the payment of reasonable charges. . . .

The reasonableness of discontinuing one public service for failure to pay for a related public service was recognized in *Rash v. Louisville & Jefferson County Met. Sewer Dist.*, 309 Ky. 442, 217 S.W.2d 232, and *City of Covington v. Sanitation District No. 1*, Ky., 301 S.W.2d 885. . . . The record shows that garbage disposal and water supply are closely related from a sanitation standpoint and we can find nothing arbitrary or unreasonable about this method of collecting service charges.

¹ At the request of this office, the Kentucky League of Cities provided its input, advising that "generally, a city has the authority to terminate utility service for failure to pay for that particular service (such as water) or for a related service (such as garbage disposal)."

Id. at 320.² The *Cassidy* court expressly held that a city may terminate water services for nonpayment of a garbage bill.³

Second, the Interlocal Cooperation Act, KRS 65.210-300, provides that "any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state," KRS 65.240(1), and that "any two (2) or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of KRS 65.210 to 65.300." KRS 65.240(2). "KRS 65.240 expressly permits any two or more public agencies of Kentucky to contract to do jointly what each can do alone." OAG 85-97. Since both the City and the water districts have the power to terminate one public service for the failure to pay for a related public service, they may enter into an interlocal agreement to do so.⁴

In summary, we advise that a city may cut off water services for failure to pay for garbage services, and local government entities may enter into interlocal agreements to provide for the termination of a public service for failure to pay for a related public service.

² See also OAG 79-47 ("The city may discontinue a public service or services for failure to pay for a related public service."). *But see id.* ("It could not terminate, for failure to pay the garbage fee, other public services not related to garbage service and it could not terminate public services . . . for failure of the person to pay his city taxes, a collateral or independent matter from that pertaining to the furnishing of public services.").

³ We caution, as does the Kentucky League of Cities, that "where a public service company discontinues its service for nonpayment of a disputed bill, it does so at its peril; and, if the public entity is wrong, it is liable for at least compensatory damages . . ." OAG 79-47. *See Camp Taylor Dev. Co. v. Wimberg*, 113 S.W.2d 9, 12 (Ky. 1938) ("A water company's right to cut off a consumer's water supply cannot be exercised so as to coerce him into paying a bill which is incorrect.").

⁴ *See generally* KRS 96.932 ("Cities may enforce collection of lawful rates and charges for the use of municipal sewer facilities by requiring that water service, whether provided publicly or privately, be discontinued until payment is made or some satisfactory arrangement is reached.").

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A handwritten signature in cursive script that reads "Matt James".

Matt James
Assistant Attorney General